

STATEMENT OF ISSUES ON APPEAL

- I. Where the Safe Harbor Provisions arising under Bankruptcy Code sections 560 and 561 mandate that the exercise by any swap participant of “any contractual right” to offset or net “arising under or in connection with the termination, liquidation, or acceleration” of the swap agreements “shall not be stayed, avoided or otherwise limited by operation of any provision of [the Bankruptcy Code]”, may an ISDA Master Agreement party exercise retention and setoff rights against a post-petition deposit into an account of a Chapter 11 debtor?
- II. In light of the Safe Harbor Provisions of sections 560 and 561, did the Bankruptcy Court err in its conclusion that the existence of the automatic stay under Bankruptcy Code Section 362 rendered a deposit account of the Chapter 11 Debtor unavailable for both retention and setoff by a Safe Harbor swap counterparty as to post-petition deposits into the Chapter 11 Debtor’s account?
- III. In light of the Safe Harbor Provisions of sections 560 and 561, did the Bankruptcy Court err in its conclusion that the existence of setoff limitations under Section 553(a) rendered a deposit account of the Chapter 11 Debtor unavailable for both retention and set off by a Safe Harbor swap counterparty as to post-petition deposits into the Chapter 11 Debtor’s account?

**AMENDED DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON
APPEAL**

Swedbank hereby designates the following items to be included in the record on appeal:¹

Designation Number	Filing Date	Claim Number/Docket Number²	Description
1	1/22/2010	6734	Motion to Impose Automatic Stay: <i>Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code for an Order Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> filed by Richard P. Krasnow on behalf of Lehman Brothers Holdings Inc.. with hearing to be held on 2/10/2010 at 10:00 AM at Courtroom 601 (JMP) Objections due by 2/3/2010, (Krasnow, Richard) (Entered: 01/22/2010)
2	1/22/2010	6736	Declaration of <i>Adrian Teng in Support of Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code for an Order Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>6734</u>) filed by Richard P. Krasnow on behalf of Lehman Brothers Holdings Inc.. (Krasnow, Richard) (Entered: 01/22/2010)
3	2/03/2010	6976	Response <i>Swedbank's Objection to Debtors' Motion Pursuant to Section 105(a) and 362 of the Bankruptcy Code for an Order Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>6734</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). with hearing to be held on 2/10/2010 at 10:00 AM at Courtroom 601 (JMP) (Montgomery, Claude) (Entered: 02/03/2010)

¹ Each designated item shall also include any exhibits, attachments, declarations and affidavits related to such item.

² All docket items refer to Case No. 08-13555.

4	2/03/2010	6978	Affidavit <i>Declaration of Johan Stenberg in Support of Swedbank's Objection to Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code for an Order Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>6976</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Exhibit E# <u>6</u> Exhibit F# <u>7</u> Exhibit G)(Montgomery, Claude) (Entered: 02/03/2010)
5	4/09/2010	8196	Response: <i>Debtors' Reply in Further Support of Debtors Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code for an Order Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>6734</u> , <u>6976</u>) filed by Richard P. Krasnow on behalf of Lehman Brothers Holdings Inc.. (Krasnow, Richard) (Entered: 04/09/2010)
6	4/16/2010	8490	Transcript regarding Hearing Held on April 14, 2010 10:03 AM Remote electronic access to the transcript is restricted until 7/15/2010. (Richards, Beverly) (Entered: 04/20/2010)
7	4/22/2010	8564	Motion for Stay Pending Appeal <i>Swedbank's Memorandum of Law Pursuant to Fed. R. Bankr. P. 8005 for Stay Pending Appeal of the Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). with hearing to be held on 5/6/2010 at 01:30 PM at Courtroom 601 (JMP) Responses due by 4/30/2010, (Attachments: # <u>1</u> Exhibit A)(Montgomery, Claude) (Entered: 04/22/2010)

8	4/22/2010	8567	Affidavit <i>Declaration of Johan Stenberg in Support of Swedbank's Motion Pursuant to Fed. R. Bankr. P. 8005 for Stay Pending Appeal of the Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>8564</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D)(Montgomery, Claude) (Entered: 04/22/2010)
9	4/22/2010	8590	Order to Show Cause Signed on 4/22/2010 for Stay Pending Appeal for the Order Granting the Debtors' Motion Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB. A Hearing Will Be Held On 5/6/2010 at 1:30 PM in Courtroom 601. (related document(s) <u>8564</u>) (Nulty, Lynda) (Entered: 04/22/2010)
10	4/30/2010	8740	Objection: <i>Debtors' Objection to Swedbanks Motion Pursuant to Fed. R. Bankr. P. 8005 for Stay Pending Appeal of the Proposed Order Granting the Debtors Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>8564</u>) filed by Richard P. Krasnow on behalf of Lehman Brothers Holdings Inc.. (Krasnow, Richard) (Entered: 04/30/2010)
11	4/30/2010	8746	Statement / <i>Joinder Of Official Committee Of Unsecured Creditors In Debtors' Objection To Swedbank's Motion Pursuant To Fed. R. Bankr. P. 8005 For Stay Pending Appeal Of The Order Granting The Debtors' Motion Pursuant To Sections 105(a) And 362 Of The Bankruptcy Code Enforcing The Automatic Stay Against And Compelling Payment Of Post-Petition Funds By Swedbank AB</i> (related document(s) <u>8740</u>) filed by Dennis F. Dunne on behalf of Official Committee of Unsecured Creditors. with hearing to be held on 5/6/2010 at 01:30 PM at Courtroom 601 (JMP) (Dunne, Dennis) (Entered: 04/30/2010)

12	5/04/2010	8782	Response <i>Reply in Support of Swedbank's Motion to Stay Pending Appeal of the Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>8740</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). with hearing to be held on 5/6/2010 at 01:30 PM at Courtroom 601 (JMP) (Montgomery, Claude) (Entered: 05/04/2010)
13	5/04/2010	8783	Affidavit <i>Supplemental Declaration of Johan Stenberg in Support of Swedbank's Motion Pursuant to Fed. R. Bankr. P. 8005 for Stay Pending Appeal of the Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>8564</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). (Montgomery, Claude) (Entered: 05/04/2010)
14	5/05/2010	8791	Certificate of Service of <i>Swedbank's Memorandum of Law Pursuant to Fed. R. Bankr. P. 8005 for Stay Pending Appeal of the Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB (publ.) and Declaration of Johan Stenberg in Support of Swedbank's Motion for Stay Pending Appeal</i> (related document(s) <u>8564</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). (Montgomery, Claude) (Entered: 05/05/2010)

15	5/05/2010	8792	Certificate of Service of Reply in Support of Swedbank's Motion to Stay Pending Appeal of the Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB (publ.) and Supplemental Declaration of Johan Stenberg in Support of Swedbank's Motion for Stay Pending Appeal (related document(s) <u>8782</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). (Montgomery, Claude) (Entered: 05/05/2010)
16	05/05/2010	8800	Order Signed on 5/5/2010 Granting the Debtor's Motion for an Order Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB. (Related Doc # <u>6734</u>) (Nulty, Lynda) (Entered: 05/05/2010)
17	05/05/2010	8806	Memorandum Decision Signed on 5/5/2010 Granting the Debtors' Motion for an Order Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB. (Nulty, Lynda) (Entered: 05/05/2010)
18	5/06/2010	8820	Affidavit Notice of Filing of Corrected Supplemental Declaration of Johan Stenberg in Support of Swedbank's Motion Pursuant to Fed. R. Bankr. P. 8005 for Stay Pending Appeal of the Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB (related document(s) <u>8564</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). (Attachments: # <u>1</u> Exhibit A)(Montgomery, Claude) (Entered: 05/06/2010)

19	5/06/2010	8831	Notice of Appeal of <i>Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code for an Order Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>8800</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). (Attachments: # <u>1</u> Exhibit A)(Montgomery, Claude) (Entered: 05/06/2010)
20	5/06/2010	8844	Order Signed on 5/6/2010 Denying Swedbank's Motion for Stay Pending Appeal of the Proposed Order Granting the Debtors' Motion Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB. (Related Doc # <u>8564</u>) (Nulty, Lynda) (Entered: 05/06/2010)
21	5/07/2010	8920	Certificate of Service of <i>Corrected Supplemental Declaration of Johan Stenberg in Support of Swedbank's Motion Pursuant to Fed. R. Bankr. P. 8005 for Stay Pending Appeal of the Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>8820</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). (Montgomery, Claude) (Entered: 05/07/2010)
22	5/07/2010	8921	Certificate of Service of <i>Notice of Appeal of Order Granting the Debtors' Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code for an Order Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB</i> (related document(s) <u>8831</u>) filed by Claude D. Montgomery on behalf of Swedbank AB (publ.). (Montgomery, Claude) (Entered: 05/07/2010)

23	5/06/2010	9060	Transcript regarding Hearing Held on May 6, 2010 1:32 PM RE: Swedbank's Memorandum of Law for Stay Pending Appeal of the Order Granting the Debtors' Motion Enforcing the Automatic Stay Against and Compelling Payment of Post-Petition Funds by Swedbank AB. (Richards, Beverly) (Entered: 05/17/2010)
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Dated: New York, New York
May 27, 2010

SALANS LLP

By: /s/ Claude D. Montgomery
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